

[4910-13]

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 187

[Docket No. FAA-00-7018; Amendment No. 187-11]

RIN 2120-AG17

**Fees for FAA Services for Certain Flights**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Interim final rule with request for comments; notice of public meeting.

**SUMMARY:** This document establishes fees for FAA air traffic and related services for certain aircraft that transit U.S.-controlled airspace but neither take off from, nor land in, the United States. This action will allow the FAA to recover through fees the costs it incurs in providing these services. The FAA is requesting comments concerning the fee schedule and the fee collection process. In addition, the FAA is announcing a public meeting on the Interim Final Rule to provide an additional opportunity for the public to comment.

**DATES:** Effective date August 1, 2000. Comments must be received on or before October 4, 2000. The public meeting will be held on June 29, 2000.

**ADDRESSES:** Comments on this document should be mailed or delivered, in duplicate, to: U.S. Department of Transportation Dockets, Docket No. FAA-00-7018, 400 Seventh Street SW., Room Plaza 401, Washington, DC 20590. Comments may be filed and examined in Room Plaza 401 between 10 a.m. and 5 p.m. weekdays, except Federal holidays. Comments also may be sent electronically to the Dockets Management System (DMS) at the following Internet address: <http://dms.dot.gov/> at any time. Commenters who wish to file comments electronically should follow the instructions on the DMS web site.

The public meeting will be held at the Holiday Inn Capitol, 550 C Street, SW., Washington, DC 20024;  
Registration: 8:30 a.m.; Meeting: 9:00 a.m.-4:00 p.m.

**FOR FURTHER INFORMATION CONTACT:** Randall Fiertz, Office of Performance Management, (APF-1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-7140; fax (202) 493-4191.

Requests to present a statement at the public meeting on the Fees for FAA Services for Certain Flights Interim Final Rule and questions regarding the logistics of the meeting should be directed to Judy Courbois, Office of Rulemaking (ARM-102), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267-9783; fax (202) 267-5075.

## **SUPPLEMENTARY INFORMATION:**

### **Comments Invited**

Interested persons are invited to participate in this rule by submitting such written data, views, or arguments as they may desire. Comments relating to the environmental, energy, federalism, or economic impact that might result from adopting the rules in this document also are invited. The FAA specifically seeks comments on the fee schedule, formulas used to determine the cost per unit, the associated collection process, and the scope of services for which costs will be recovered. Comments must identify the regulatory docket or amendment number and be submitted in duplicate to the DOT Rules Docket address specified above.

All comments received, as well as a report summarizing each substantive public contact with FAA personnel concerning this rulemaking, will be filed in the docket. The docket is available for public inspection before and after the comment closing date. All comments received on or before the closing date will be considered by the Administrator before taking final action on this rulemaking. Comments filed late will be considered as far as possible without incurring expense or delay. The proposals in this document may be changed in light of the comments received.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this document must include a pre-addressed, stamped postcard with those comments on which the following statement is made: "Comments to Docket No. FAA-00-7018." The postcard will be date stamped and mailed to the commenter. The 120-day comment period is intended to allow the international commenters sufficient time to submit comments.

In order to give the public an additional opportunity to comment on the Interim Final Rule, the FAA is planning a public meeting. Because of this additional opportunity to comment on the Interim Final Rule, the FAA does not intend to extend the closing date for comments.

Requests from persons who wish to present oral statements at the public meeting on Fees for FAA Services for Certain Flights Interim Final Rule should be received by the FAA no later than June 22, 2000. Such requests should be submitted to Judy Courbois, as listed in the section titled **FOR FURTHER INFORMATION CONTACT**. Requests received after June 22, 2000, will be scheduled if time is available during the meeting; however, the names of those individuals may not appear on the written agenda. The FAA will prepare and make available at the meeting an agenda listing the scheduled speakers. To accommodate as many speakers as possible, the amount of time allocated to each speaker may be less than the amount of time

requested. Any person desiring to have available audiovisual equipment should notify the FAA when requesting to be placed on the agenda.

### **Public Meeting Procedures**

The public meeting will be held on June 29, 2000, at the Holiday Inn Capitol, 550 C Street, SW., Washington, DC 20024; Registration: 8:30 a.m.; Meeting: 9:00 a.m. - 4:00 p.m.

The following procedures are established to facilitate the public meeting on the Interim Final Rule:

1. There will be no admission fee or other charge to attend or to participate in the public meeting. The meeting will be open to all persons who have requested in advance to present statements or who register on the day of the meeting (between 8:30 a.m. and 9:00 a.m.) subject to availability of space in the meeting room.

2. The public meeting may adjourn early if scheduled speakers complete their statements in less time than is scheduled for the meeting.

3. The FAA will try to accommodate all speakers; therefore, it may be necessary to limit the time available for an individual or group.

4. Representatives of the FAA will conduct the public meeting. A panel of FAA personnel involved in this issue will be present.

5. Participants should address their comments to the panel. No participant will be subject to cross-examination by any other participant.

6. Sign and oral interpretation can be made available at the meeting, as well as an assistive listening device, if requested no later than 1 week before the meeting.

7. The meeting will be recorded by a court reporter. A transcript of the meeting and any material accepted by the panel during the meeting will be included in the public docket (Docket No. FAA-00-7018). Any person who is interested in purchasing a copy of the transcript should contact the court reporter directly. This information will be available at the meeting.

8. The FAA will review and consider all material presented by participants at the public meeting. Position papers or material presenting views or information related to the Interim Final Rule may be accepted at the discretion of the presiding officer and subsequently placed in the public docket. The FAA requests that persons participating in the meeting provide 10 copies of all materials to be presented for distribution to the panel members; other copies may be provided to the audience at the discretion of the participant.

9. Statements made by members of the public meeting panel are intended to facilitate discussion of the issues or to clarify issues. Because the meeting concerning the Fees for FAA

Services for Certain Flights Interim Final Rule is being held during the comment period, final decisions concerning issues that the public may raise cannot be made at the meeting. The FAA may, however, ask questions to clarify statements made by the public and to ensure a complete and accurate record. Comments made at this public meeting will be considered by the FAA.

10. The meeting is designed to solicit public views on the Interim Final Rule. Therefore, the meeting will be conducted in an informal and nonadversarial manner.

#### **Availability of the Interim Final Rule**

An electronic copy of this document may be downloaded using a modem and suitable communications software from the FAA regulations section of the FedWorld electronic bulletin board service (telephone: (703) 321-3339) or the Government Printing Office (GPO)'s electronic bulletin board service (telephone: (202) 512-1661).

Internet users may reach the FAA's web page at <http://www.faa.gov/avr/arm/nprm/nprm.htm> or the GPO's web page at <http://www.access.gpo.gov/nara> access to recently published rulemaking documents.

Any person may obtain a copy of this document by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM-1, 800 Independence Avenue SW., Washington, DC

20591, or by calling (202) 267-9680. Communications must identify the amendment number or docket number of this Interim Final Rule.

Persons interested in being placed on the mailing list for future rulemaking documents should request from the above office a copy of Advisory Circular No. 11-2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

#### **Small Business Regulatory Enforcement Fairness Act**

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996, requires the FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. Therefore, any small entity that has a question regarding this document may contact their local FAA official. Internet users can find additional information on SBREFA on the FAA's web page at <http://www.faa.gov/avr/arm/sbrefa.htm> and may send electronic inquiries to the following Internet address: [9-AWA-SBREFA@faa.gov](mailto:9-AWA-SBREFA@faa.gov).



## **Background**

### Authority to Establish Fees

The Federal Aviation Reauthorization Act of 1996 (the Act) directs the FAA to establish by Interim Final Rule a fee schedule and collection process for air traffic control (ATC) and related services provided to aircraft, other than military and civilian aircraft of the U.S. Government or of a foreign government, that neither take off from, nor land in, the United States (49 U.S.C. 45301, as amended by Pub. L. 104-264).

Also, the Act directs the FAA to ensure that the fees allowed by the Act are directly related to the FAA's costs of providing the service rendered. The Act further states that services for which costs may be recovered include the costs of ATC, navigation, weather services, training and emergency services that are available to facilitate safe transportation over the United States, and other services provided by the Administrator or by programs financed by the Administrator to flights that neither take off from, nor land in, the United States.

### History

On March 20, 1997, the FAA published an Interim Final Rule, Fees for Air Traffic Services for Certain Flights through U.S.-Controlled Airspace (62 FR 13496), which established fees for FAA air traffic and related services provided to certain

aircraft that transit U.S.-controlled airspace but neither take off from, nor land in, the United States. The FAA invited public comment on this Interim Final Rule. The effective date of the rule was May 19, 1997, and the comment period closed on July 18, 1997. In addition, the FAA held a public meeting on May 1, 1997. The FAA also published two additional Interim Final Rules that amended the original Interim Final Rule on May 2, 1997 (62 FR 24285) and October 2, 1997 (62 FR 51735).

This rulemaking was subsequently challenged. The Airline Transportation Association of Canada and six airlines petitioned the United States Court of Appeals for the District of Columbia (court) to review the rule.

On January 30, 1998, the court issued its opinion on the seven petitions consolidated in the case of *Asiana Airlines et. al., v. the FAA*, 328 U.S. App. D.C. 237, 134 F. 3d 393, 1998 U.S. App. LEXIS 1286 (1998). The court rejected the petitioners' claims that the FAA acted improperly in employing an expedited procedure before the effective date of the Interim Final Rule, and that the FAA violated the anti-discrimination provisions of various international aviation agreements. However, the court concluded that the FAA's methodology of determining cost violated statutory requirements.

Therefore, the court vacated the Interim Final Rule in its entirety and remanded the Interim Final Rule to the FAA for further proceedings consistent with the opinion.

Since the date the court vacated the Interim Final Rule issued in 1997 the FAA has met with various user and aviation interest groups to listen to their concerns about fees under the Act. The last such meeting was on May 24, 2000, and included the Department of Transportation General Counsel and members of her staff. A summary of each these meetings can be found in the docket of this rulemaking.

#### **The New Interim Final Rule**

When Congress passed the Act it explicitly required the FAA to collect the relevant fees initially by establishing an Interim Final Rule. The D.C. Circuit referenced this fact in 1998, but nevertheless struck the FAA's earlier rule because it did not comport with another Congressional requirement, that is, that the fee be based on costs incurred and not value to the user paying the fee. Although nearly 4 years have passed since the passage of the Act, the Act continues to require that the fees be promulgated by Interim Final Rule (see in the docket the FAA Information Paper to ICAO, September 1998, entitled "Fees for Air Traffic Services for Certain Flights through U.S.-Controlled Airspace").

The Congressional purpose of requiring the fees by Interim Final Rule has not been changed by the passage of time. Congress has not changed the statutory requirements (despite multiple opportunities to do so) and has continued to appropriate funds each year based on the collection of these fees. (See May 25, 2000, letter in the docket from Congressman Duncan, Chairman, Aviation Subcommittee.)

The FAA has at all times acted as quickly as possible in establishing the fees but, as noted by the court in 1998, the FAA has been constrained by the lack of accurate cost information on which to base the fees. The development of an accurate cost information system, which is the predicate for the imposition of reasonable fees, has been a time consuming but necessary process. Only recently has the FAA's new Cost Accounting System provided this information and only now can the FAA proceed with rulemaking as directed by 49 U.S.C. 45301. The FAA has therefore determined that the Act continues to require that the fees the FAA is now imposing be established initially as an Interim Final Rule.

Therefore, effective 60 days after the publication of this Interim Final Rule, the FAA will again assess a fee for air traffic and related services provided to users of aircraft that transit U.S.-controlled airspace (airspace owned or delegated to the United States) but do not take off from or land in the

United States. The rule does not apply to military and civil aircraft operated by the U.S. Government or by a foreign government or to certain Canada-to-Canada flights.

For the purpose of this rulemaking, U.S.-controlled airspace includes all U.S. airspace either directly owned by the United States or allocated to the United States by the International Civil Aviation Organization or by other countries. This can further be defined in general as enroute and oceanic airspace. Enroute airspace is generally defined, for the purpose of this rulemaking, as airspace where primarily radar-based air traffic services are provided. Oceanic airspace is generally defined, for the purpose of this rulemaking, as airspace where primarily procedural air traffic services are provided. A description of the U.S.-controlled airspace by latitude and longitude has been placed in the public docket of this rulemaking.

Canada-to-Canada operations are defined (hereafter "Canada-to-Canada") as flights conducted by any aircraft of any nationality that take off from and land in Canada without an intermediate stop outside of Canada that operate in U.S.-controlled airspace. Users are defined as operators of aircraft flights that neither depart from nor land in the United States.

Flights that transit U.S.-controlled airspace but do not land in or depart from the United States (overflights) currently contribute nothing financially to the provision of air traffic services (ATS). This is despite the fact that these flights use ATS and other services that impose costs on the U.S. ATC system. Congress has determined in the 1996 Act that these users should bear a portion of the cost of those services.

The air transportation environment has changed over the past decades with the advent of increasing numbers of long-range aircraft. The use of these aircraft and the routes they are able to fly have greatly increased the efficiency of air transportation. Although these overflight operations do not generally enter areas of high density air traffic, they do use FAA ATS.

Operators of overflight aircraft benefit from the FAA's provision of ATS in several ways. First, and most importantly, FAA's ATS enhance safety through ATC, navigation, and communications services. Second, flight through U.S.-controlled airspace provides optimized routing for long-distance aircraft, which is of great value to the users of these aircraft. The level of ATS and other services that is actually provided to operators of overflights depends, in part, on the portions of U.S.-controlled airspace such flights transit. These services can include communications, navigation, radar surveillance,

emergency services, and flight information services. For aircraft transiting U.S. enroute airspace, Air Route Traffic Control Centers (ARTCCs) provide separation by means of radar surveillance (if they are operating under instrument flight rules or in airspace above 18,000 feet). Also, these flights generally use navigational aids and radio communication with ARTCCs. These services are also provided in certain oceanic areas near islands such as Bermuda and The Bahamas.

For aircraft transiting oceanic airspace, where radar surveillance and navigational aids are not available, navigation is generally conducted by on-board systems. Aircraft separation, however, is provided under procedural control, under which flights report their position to an air traffic controller each time they fly over a specified reporting point.

The FAA estimates that approximately 235,000 non-public (i.e. aircraft that are not exempt) flights transit U.S.-controlled airspace without landing or taking off annually (see the report entitled "Overflight Fee Development Report," which has been placed in the docket).

The cost to the FAA associated with overflights covered under this rule is projected to be approximately \$50.4 million, including the cost of developing and collecting the fees. This amount represents the sum of the separate costs for providing ATC and related services to overflights flying through enroute

and oceanic airspace as well as all development costs and all projected collection costs associated with the fees.

Charging overflights for ATS and related services is accepted in the international arena. The International Civil Aviation Organization (ICAO) states that "where air navigation services are provided for international use, the providers may require the users to pay their share of the costs...."

(Statements by the Council to Contracting States on Charges for Airports and Air Navigation Services, Paragraph 32 (Doc. 9082/5)). Further, paragraph 42 of Doc. 9082/5 notes that "providers...may require all users to pay their share of the costs of providing them regardless of whether or not utilization takes place over the territory of the provider state."

(Document 9082/5 has been placed in the docket.)

#### Canada-to-Canada Operations

Currently, many Canadian flights transit U.S.-controlled airspace because of air traffic coordination between the United States and Canada. Routing through U.S.-controlled airspace by U.S. or Canadian ATC occurs because it is either the shortest route or it offers the most favorable flight conditions. This frequent and variable routing is done without regard to the border between Canada and the United States.

The FAA has a long-standing ATC relationship with the Canadian ATC authority, currently known as NAV CANADA, beginning



with an exchange of notes between the United States and Canadian governments in 1963. The FAA has determined that assessing fees on Canada-to-Canada flights would be inconsistent with: (1) 49 U.S.C. 106(1), 40103, and 40105; (2) the FAA's international agreements with Canada; and (3) the safety of all trans-border U.S.-Canadian flights. This determination gives maximum effect to all applicable statutes and agreements. The FAA's costs associated with Canada-to-Canada flights have been excluded from the cost base that overflight fees recoup. Accordingly, the total cost of overflights is \$50.4 million, but expected billing is approximately \$39.6 million (the difference being attributed to the FAA's agreements with NAV CANADA). These costs do not consider operational benefits under the agreements with Canada.

#### The Overflight Fee

As noted above, the Act directs the FAA to establish a fee schedule and collection process for ATC and related services provided to aircraft other than military and civil aircraft operated by the U.S. government or by a foreign government that neither take off from, nor land in, the United States. The Act further directs the FAA to issue the initial fee schedule and associated collection process as an Interim Final Rule, to ask for public comment, and to issue a subsequent final rule.

The Act requires that fees be directly related to the FAA's cost of providing the services rendered. Furthermore, the

Conference Report for the Act states "...assuming similar costs of serving different carrier and aircraft types, the fee may not vary based on factors such as aircraft seating capacity or revenue derived from passenger fares" (Congressional Record, September 26, 1996, H11316.). Consistent with statutory direction, the sense of Congress, as documented in the Conference Report, and FAA's aviation safety mission, the FAA has developed a uniform and fair fee for all users based on the FAA's Cost Accounting System (CAS).

Two documents have been placed in the docket of this rulemaking that detail how the fees in this rule were determined and calculated. The first document, "Cost Methodology Used to Develop Cost of Enroute and Oceanic ATC Services" was prepared by the public accounting firm of Arthur Andersen. This document details how the FAA's new CAS, also required by the Act, determines the FAA's cost of the two air traffic services, enroute and oceanic. The second document, "Overflight Fee Development Report," was prepared by the FAA. This document details how, based on the CAS, the FAA determined the cost of services provided to overflights based on the cost of enroute and oceanic services. The document also details how the fees were calculated in this rulemaking. Essentially, the overflight fee is computed based on distance flown through U.S.-controlled airspace. Separate computations are made for services provided

in enroute airspace and in oceanic airspace to reflect the different costs of providing services in each of these environments.

The FAA will charge users \$37.43 per 100 nautical miles (or portion thereof) flown in enroute airspace and \$20.16 per 100 nautical miles (or portion thereof) flown in oceanic airspace.

Based on the second document, the fee for users (i.e., operators of an aircraft overflight) is calculated as follows:

$$R_{ij} = (DO_{ij} \times CO) + (DE_{ij} \times CE)$$

where

$R_{ij}$  = the fee charged to aircraft flying between city i and city j,

$DO_{ij}$  = distance traveled in U.S.-controlled oceanic airspace expressed in hundreds of nautical miles for aircraft flying between city i and city j,

$CO$  = \$20.16 per 100 nautical miles flown in oceanic airspace,

$DE_{ij}$  = distance traveled in U.S.-controlled enroute airspace expressed in hundreds of nautical miles for aircraft flying between city i and city j.

$CE$  = \$37.43 per 100 nautical miles flown in enroute airspace.

This formula assumes that actual entry and exit data are available for individual flights in U.S.-controlled airspace. If not, best available flight data will be used.

The fees are designed to charge only the directly related costs of FAA services to overflight users in a logical and fair manner.

Also, the FAA has determined that no fee will be assessed unless the cumulative charges exceed \$250 per calendar month, based on Greenwich Mean Time (GMT), by any particular user. The fees in this Interim Final Rule, including the \$250 exclusion, will be reviewed when the Final Rule is issued and at least once every 2 years, and adjusted to reflect changes in costs.

The following table illustrates the fee schedule.

Origination	Destination		Enroute			Rate 1/
			Rate 1/	Miles 2/	Charge	
Canada YVR International Airport, Vancouver	Mexico SJD San Jose Del Cabo		\$37.43	1,084	\$405.74	\$20.16
Asia NRT Narita Airport, Tokyo, Japan	Canada YYC Calgary, Alberta		\$37.43	1,938	\$725.39	\$20.16
Europe AMS Amsterdam, Netherlands	Caribbean MBJ Montego Bay, Jamaica		\$37.43	---	---	\$20.16
Europe LHR Heathrow Airport London, Eng.	Mexico Mexico City		\$37.43	1,515	\$567.06	\$20.16
Asia SEL Seoul, South Korea	Pacific Sydney, Australia		\$37.43	---	---	\$20.16

1/ Rates are expressed per 100 nautical miles.

2/ Miles are nautical miles.

Note: This diagram is for illustrative purposes only.

## Fee Collection Process and Enforcement

The FAA has established and maintains data from several sources, including but not limited to, flight plans and radar/radio data that identifies the point of entry and exit, aircraft registration number, and the type of aircraft for all aircraft entering U.S.-controlled airspace. Information will be extracted from the database and used, along with the fee formula, to compute each fee. The fee will include a charge to cover the cost of developing the fee as well as the cost of billing and collection.

The FAA will bill users pursuant to 49 CFR part 89 by sending a monthly invoice. Affected commercial users are requested to designate and submit to the FAA the name and address of a U.S. agent for billing. Users not providing a billing address will be billed at the address of record of the aircraft owner as maintained in the country where the aircraft is registered.

As provided in § 187.15(d), monthly remittance of fees of \$1,000 or more are to be paid by electronic funds transfer. Monthly remittances below \$1,000 may be paid by electronic funds transfer, check, money order, credit card, or draft. All payments must be in U.S. currency.

Invoices that become delinquent will be collected according to 49 CFR part 89. The FAA intends to pursue vigorously all delinquent balances to the extent provided by law.

If any adjustments are necessary in the fees billed or collected the FAA will follow the procedures in 49 CFR part 89 to settle debts of users. This includes issuing credits and refunds to users as appropriate and authorized by law.

#### **Paperwork Reduction Act**

In accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the information collection requirements associated with this interim final rule were submitted to the Office of Management and Budget (OMB) for review and approval. There are no new requirements for the information collection associated with this amendment. An estimated 300 to 600 aircraft operators are requested to provide the FAA the name, the address, and phone number of any operator obtaining overflight services. It is estimated to take between 5 minutes and several days to complete the one-page form, depending on how long it takes a carrier to notify its billing department, and for that department to set up an account from which to pay these funds, for a total of 50 hours. This would be a one-time collection unless the carrier needs to change any of the information provided to the FAA.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control number associated with this collection is Number 2120-0618.

#### **Compatibility With ICAO Standards**

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has reviewed the corresponding ICAO Standards and Recommended Practices and has identified no differences with these regulations.

#### **Regulatory Evaluation Summary**

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic effect of regulatory changes on small entities. Third, OMB directs agencies to assess the effect of regulatory changes on small entities and changes on international trade. In conducting these analyses, the FAA has determined that this



Interim Final Rule is "a significant regulatory action" under section 3(f) of Executive Order 12866 and, therefore, is subject to review by OMB. The Interim Final Rule is considered significant under the regulatory policies and procedures of the Department of Transportation (44 FR 11034, February 26, 1979). This Interim Final Rule should not have a significant impact on a substantial number of small entities and will not constitute a barrier to international trade. All of these analyses have been prepared as a regulatory evaluation and are summarized below. The FAA invites the public to provide comments and supporting data on the assumptions made in this evaluation. All comments received will be considered in the final regulatory evaluation. A copy of the complete regulatory evaluation has also been placed into the docket.

### **Benefits**

In addition to authority to establish fees, the Act directs the FAA to ensure that the fees are directly related to the FAA's costs of providing the service rendered. The Act states that services for which costs may be recovered include ATC, navigation, weather services, training, and emergency services. The fees collected will reimburse the FAA for the actual cost of services in the manner authorized by Congress. Thus, the beneficiaries of this service, rather than the taxpayer, would largely pay for the service provided by the FAA. Moreover, the

fees being established by the FAA cover only the costs of providing these services.

Charging a user fee is expected to result in better allocation of scarce societal and FAA resources. A fee will establish a mechanism through which those who use a service cover the majority of the costs for resources necessary to fund the service that is provided. This will result in a more efficient allocation of resources, and the efficient allocation of resources will benefit society at large, because more resources will become available for other services demanded by the public.

The user fee is expected to generate approximately \$39.6 million in billings during the first 12 months of this rule, including the cost of collections. The FAA believes the established fees are equitable and justified.

#### **Cost of Collection of User Fees to the FAA**

The FAA estimates a one-time development cost of approximately \$1.6 million. The FAA will amortize these development costs over a 2-year period in equal annual amounts of approximately \$800,000. A small portion of the original development costs are included in the current development costs because some items such as system design or hardware will be used for fee collection under the current rule. In addition to

the development costs, the FAA estimates an annual operating cost of approximately \$1 million.

The costs of collection of the fee are relatively small compared to the billings. The cost of collection will be reviewed at least once every 2 years at the same time when fee charges are reviewed and adjusted to reflect the current costs of performing the services covered. The first review will be scheduled for no later than 2 years after the date of publication of the Final Rule. Fees will be adjusted to reflect historical great circle distance entry and exit mileage within U.S.-controlled airspace.

#### **Regulatory Flexibility Determination**

The Regulatory Flexibility Act of 1980 (RFA) establishes "as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation." To achieve that principle, the RFA requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The RFA covers a wide-range of small entities, including small businesses, not-for-profit organizations, and small governmental entities.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the determination is that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

The overflight fee will primarily affect foreign users. Since the RFA applies to domestic entities and does not apply to foreign entities, no consideration of the Interim Final Rule's impact on foreign users is required. In addition, because no fee will be assessed to a user unless they accumulate charges that exceed \$250 per month, small domestic and infrequent operators should not be impacted by the rule. Accordingly, the FAA certifies that this rule will not have a significant economic impact on a substantial number of small entities.

#### **International Trade Impact**

The overflight provisions will primarily affect foreign commercial operators. Most commercial aircraft are designed to operate more efficiently at altitudes in excess of 18,000 feet. All operations at altitudes at or above 18,000 feet controlled by the United States must be under ATC. The FAA believes that it is unlikely that foreign commercial users will alter behavior to avoid using ATS and other services. In addition, to some extent, commercial users are able to pass the overflight fee on to their passengers or cargo customers.

The Interim Final Rule may have a favorable competitive impact on U.S. commercial operators. Currently U.S. commercial operators are at a comparative disadvantage with their foreign counterparts when users (U.S. and foreign) must pay user fees to transit other countries' airspace while foreign users do not have to pay a fee to transit U.S.-controlled airspace. The Interim Final Rule could enhance the competitiveness of domestic commercial operators in international markets.

#### **Executive Order 13132, Federalism**

The FAA has analyzed this interim final rule under the principles and criteria of Executive Order 13132, Federalism. The FAA has determined that this action will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the

distribution of power and responsibilities among the various levels of government. Therefore, the FAA has determined that this interim final rule does not have federalism implications.

#### **Unfunded Mandates Reform Act**

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), codified in 2 U.S.C. 1501-1571, requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any 1 year. Section 204(a) of the UMRA, 2 U.S.C. 1534(a), requires the Federal agency to develop an effective process to permit timely input by elected officers (or their designees) of State, local, and tribal governments on a proposed "significant intergovernmental mandate." A "significant intergovernmental mandate" under the UMRA is any provision in a Federal agency regulation that will impose an enforceable duty upon State, local, and tribal governments, in the aggregate, of \$100 million (adjusted annually for inflation) in any 1 year. Section 203 of the UMRA, 2 U.S.C. 1533, which supplements section 204(a), provides that before establishing any regulatory requirements that might significantly or uniquely affect small governments, the agency shall have developed a plan

that, among other things, provides for notice to potentially affected small governments, if any, and for a meaningful and timely opportunity to provide input in the development of regulatory proposals.

This rule does not contain any Federal intergovernmental mandates or private sector mandate that exceeds \$100 million in any 1 year.

### **Environmental Analysis**

FAA Order 1050.1D defines FAA actions that may be categorically excluded from preparation of a National Environmental Policy Act environmental assessment or environmental impact statement. In accordance with FAA Order 1050.1D, appendix 4, paragraph 4(j), this rulemaking action qualifies for a categorical exclusion.

### **Energy Impact**

The energy impact of the Interim Final Rule has been assessed in accordance with the Energy Policy and Conservation Act (EPCA), Pub.L. 94-163, and FAA Order 1053.1. It has been determined that the Interim Final Rule is not a major regulatory action under the provisions of the EPCA.

### **List of Subjects in 14 CFR Part 187**

Administrative practice and procedure and Air transportation.

## **The Amendment**

In consideration of the foregoing, the Federal Aviation Administration amends part 187 of Title 14, Code of Federal Regulations as follows:

### **PART 187-FEES**

1. The authority citation for part 187 continues to read as follows:

**Authority:** 31 U.S.C. 9701, 49 U.S.C. 106(g),  
49 U.S.C. 106(l)(6), 40104-40105, 40109, 40113-40114, 44702.

2. In §187.1, add the following sentences to the end of the section:

#### **§ 187.1 Scope.**

\* \* \* Appendix A to this part prescribes the methodology for computation of fees for certification services performed outside the United States. Appendix B to this part prescribes the fees for certain aircraft flights that transit U.S.-controlled airspace.

3. In § 187.15, add paragraph (d) to read as follows:

#### **§ 187.15 Payment of fees.**

\* \* \* \* \*

(d) The fees described in appendix B of this part are payable to the Federal Aviation Administration in U.S. currency. Remittance of fees of \$1,000 or more are to be paid by electronic funds transfer. Remittances below \$1,000 may be paid



by electronic funds transfer, check, money order, credit card, or draft.

4. In Part 187, add appendix B to read as follows:

**APPENDIX B TO PART 187 -- FEES FOR FAA SERVICES FOR CERTAIN  
FLIGHTS**

(a) Applicability. Except as provided in paragraphs (b) and (c) of this appendix, this appendix applies to any person who conducts a flight through U.S.-controlled airspace that does not include a landing or takeoff in the United States.

U.S.-controlled airspace is defined as all U.S. airspace either directly owned by the United States or allocated to the United States by the International Civil Aviation Organization or by other countries. This is further defined, for this section only, as enroute and oceanic airspace. Enroute airspace is defined, for this section only, as airspace where primarily radar-based air traffic services are provided. Oceanic airspace is defined, for this section only, as airspace where primarily procedural air traffic services are provided.

(b) Governmental flights. This appendix does not apply to any military or civil flight operated by the United States Government or by any foreign government.

(c) Canada-to-Canada flights. This appendix will not apply to any operator of a flight that takes off and lands in

Canada, without an intermediate stop outside Canada, that operates in U.S.-controlled airspace.

(d) Services. Persons covered by paragraph (a) of this appendix must pay a fee for the use of certain services, including but not limited to the following:

- (1) Air traffic management.
- (2) Communications.
- (3) Navigation.
- (4) Radar surveillance, including separation services.
- (5) Flight information services.
- (6) Procedural control.
- (7) Emergency services and training.

(e) Methodology for the computation of fees.

(1) For the use of any of the services listed in paragraph (d) of this appendix, the fee is computed based on the distance flown in either enroute or oceanic airspace (U.S.-controlled airspace.) Distance flown is based on the great circle distance (GCD) for the actual point of entry and the actual point of exit of U.S.-controlled airspace. Fees are assessed using the methodology presented in paragraph (e)(2) of this appendix. Where actual entry and exit points are not available, the best available flight data will be used to calculate the fee.

(2) A User (operator of an overflight) is assessed a fee for each 100 nautical miles (or portion thereof) flown in U.S.-controlled airspace. Separate calculations are made for transiting enroute and oceanic airspace. The total fee charged for an overflight between any two cities is equal to the sum of these two charges. This relationship is summarized as:

$$R_{ij} = \$20.16 * DO_{ij} + \$37.43 * DE_{ij},$$

where

$R_{ij}$  = the fee charged to aircraft flying between city i and city j,

$DO_{ij}$  = distance traveled in U.S.-controlled oceanic airspace expressed in hundreds of nautical miles for aircraft flying between city i and city j,

$DE_{ij}$  = distance traveled in U.S.-controlled enroute airspace expressed in hundreds of nautical miles for aircraft flying between city i and city j.

(f) Billing and payment procedures.

(1) Billing. The FAA will send an invoice to each user that is covered by this appendix when fees are owed to the FAA. No invoice will be sent unless the monthly (based on Greenwich Mean Time) fees for service equal or exceed \$250. Users will be billed at the address of record in the country where the aircraft is registered, unless a billing address is otherwise provided.

(2) Payment. Payment must be made by one of the methods described in § 187.15(d).

(g) Review of fees. The fees prescribed in this appendix will be reviewed at least once every 2 years and adjusted to reflect the current costs of performing the services covered by this appendix.

Issued in Washington, DC, on May 30, 2000.

Jane F. Garvey  
Administrator